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CITATIONS

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1370

DENNIS COATES, et al.,

Appellants,

v.

CITY OF CINCINNATI,

Appellee.

On Appeal from the Supreme Court of Ohio

MOTION TO DISMISS OR AFFIRM

The appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Ohio on the ground that it is manifest that the question is so unsubstantial as not to need further argument.

I

THE STATUTE INVOLVED AND THE NATURE OF THE CASE

A. THE STATUTE

This appeal raises the question of the constitutional validity of Section 901-L6 of the Cincinnati Code of Ordinances.

This ordinance provides that it shall be unlawful for three or more persons to assemble, except at a public meeting of citizens, on any of the sidewalks, street corners, vacant lots or mouths of alleys, and there conduct themselves in a manner annoying to persons passing by, or occupants of adjacent buildings.

The Code of Ordinances of the City of Cincinnati provides:

> Section 901-L6. Loitering at Street Corners.
>
> It shall be unlawful for three or more persons to assemble, except at a public meeting of citizens, on any of the sidewalks, street corners, vacant lots, or mouths of alleys, and there conduct themselves in a manner annoying to persons passing by, or occupants of adjacent buildings. Whoever violates any of the provisions of this section shall be fined not exceeding fifty dollars ($50.00), or be imprisoned not less than one (1) nor more than thirty (30) days or both.

B. THE PROCEEDINGS BELOW

The appellants were charged, tried and convicted in the Hamilton County Municipal Court of violating the Cincinnati ordinance. The appellants offered no defense other than challenging the ordinance as being in violation of their constitutional rights under Article I, Section 3, of the Constitution of the State of Ohio and the First and Fourteenth Amendments to the Constitution of the United States.

The appellants timely filed their appeal with the Court of Appeals for the First Appellate District of Ohio which affirmed the trial court. Thereafter appellants took their appeal to the Supreme Court of Ohio which also af-

firmed the trial court's decision that the ordinance in question is not vague or uncertain but is, on its face, sufficiently clear to inform a person of common intelligence of the nature of the acts prohibited by the ordinance. *Cincinnati* v. *Coates*, 21 Ohio St. 2d 66 (1970).

II

ARGUMENT

THE CASE PRESENTS NO SUBSTANTIAL QUESTION NOT PREVIOUSLY DECIDED BY THIS COURT

There is no bill of exceptions in these cases, therefore the only question before the Court is the validity of the ordinance under attack.

The ordinance is attacked as being invalid on two grounds: (1) that the phrase "conduct themselves in a manner annoying to persons passing by, or occupants of adjacent buildings" is too vague and indefinite to meet the requirements of due process in that men of common intelligence must necessarily guess at its meaning and differ as to its application and (2) that the phrase is too broad, that it acts as an unnecessary restraint on First Amendment freedoms.

The terms of the challenged ordinance are sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. *Connally* v. *General Construction Co.*, 269 U.S. 385 (1926). The ordinance involved clearly and precisely delineates its reach in words of common understanding when it prohibits, *inter alia*, "conduct . . . annoying to persons

passing by". There is no mystery or confusion regarding the word "annoying". The Ohio Supreme Court defines the word "annoying" to be the present participle of the transitive verb "annoy" which means to trouble, to vex, to impede, to incommode, to provoke, to harass or to irritate. *Cincinnati* v. *Coates,* 12 Ohio St. 2d 66 (1970). The Constitution does not require impossible standards of certainty in statutes or ordinances defining crimes, all that is necessary is that the language convey a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. *Cameron* v. *Johnson,* 390 U.S. 611 (1968); *United States* v. *Petrillo,* 332 U.S. 1 (1946).

The language of the ordinance speaks solely to conduct. This Court said in *Cox* v. *Louisiana,* 379 U.S. 536, 555 (1965):

> "We emphatically reject the notion . . . that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct . . . as these Amendments afford to those who communicate ideas by pure speech."

The fact that an ordinance punishes an unlawful assembly of those who meet together and "conduct themselves in a manner annoying to persons passing by" does not render it objectionable. The Supreme Court has not said that ordinances of this type are void per se, but void when they purport to reach or are applied to peaceful conduct. *Devine* v. *Wood,* 286 F. Supp. 102 (1968); *Wright* v. *City of Montgomery, Alabama,* 406 F. 2d 867 (1969). The ordinance challenged by appellants is not vague nor is the question presented new, unique or substantial. Therefore, we urge this Court to dismiss the

appeal herein, or in the alternative, to affirm the judgment of the Supreme Court of Ohio.

Respectfully submitted,

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